

STATE OF COLORADO

EXECUTIVE CHAMBERS

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Bill Ritter Jr.
Governor

April 28, 2008

The Honorable Colorado House of Representatives
Sixty-Sixth General Assembly
Second Regular Session
State Capitol Building
Denver, CO 80203

Ladies and Gentlemen:

I am filing with the Secretary of State the following act:

HOUSE BILL 08-1375 CONCERNING THE PROVISION FOR PAYMENT OF THE EXPENSES OF THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL DEPARTMENTS OF THE STATE OF COLORADO, AND OF ITS AGENCIES AND INSTITUTIONS, FOR AND DURING THE FISCAL YEAR BEGINNING JULY 1, 2008, EXCEPT AS OTHERWISE NOTED.

Approved in part and disapproved in part on April 28, 2008, at _____.

It is my constitutional obligation to review the general appropriations bill and exercise the line item veto when necessary. While I have approved House Bill 08-1375 (the "FY 2008-09 Long Bill") as a whole, I have vetoed certain footnotes within the bill. Pursuant to the Colorado Constitution, I have filed copies of the vetoed items from this bill, with my objections, with the Secretary of State.

I would like to thank the General Assembly for working with me to balance the Colorado's critical priorities. This budget contains significant investments that will not only improve the lives of Coloradans, but result in new efficiencies and long term savings.

VETO AND COMMENT ON FOOTNOTES

Article IV, Section 12 of the Colorado Constitution allows me to line item veto the general appropriations bill (the "Long Bill"). Although I have exercised this power to veto certain portions of the FY 2008-09 Long Bill that do not meet with my approval, I have done so with respect to far fewer items than any Governor in recent history. I believe this is due in large part to the compromise over headnotes and footnotes that was reached between the legislative and executive branches. This compromise culminated in House Bill 08-1321, which was signed into

law on March 24, 2008. As a result of that bill, very few headnotes are included in the Long Bill. Instead, those substantive headnotes are in statute where they properly belong. Moreover, the bill contained much needed clarity with respect to what properly belongs in Long Bill footnotes. Specifically, the purposes of and limitations on Long Bill footnotes are as follows:

(a) When it is not feasible, due to the format of the annual general appropriation act, to set forth fully in the line item description the purpose of an item of appropriation or a condition or limitation on the item of appropriation, the footnotes at the end of each section of the annual general appropriations act are provisions that set forth such purposes, conditions or limitations. Such provisions are intended to be binding portions of the items of appropriation to which they relate to the extent that those purposes, conditions, or limitations are integral to the appropriation and are not, in accordance with the Colorado Supreme Court decision in *Colorado General Assembly v. Owens*, 136 P.3d 262 (Colo. 2006), conditions reserving to the General Assembly powers of close supervision over the appropriation.

(b) The footnotes may also contain an explanation of any assumptions used in determining a specific amount of an appropriation. However, such footnotes shall not contain any provision of substantive law or any provision requiring or requesting that any administrative action be taken in connection with any appropriation. Footnotes may set forth any other statement of explanation or expression of legislative intent relating to any appropriation.

C.R.S. § 24-75-112(2).

This new shared understanding of the scope of and limitations on footnotes comports with the constitutional limitations on what provisions may be included in a general appropriations bill. For example, Article III provides separation of powers between the executive and legislative branches. While the legislative branch has the authority to appropriate state funds, the executive branch has the inherent responsibility and authority to administer state funds. Therefore, the legislature may not attach conditions in the Long Bill that intrude into the administration of state government. See *Colorado General Assembly v. Owens*, 136 P.3d 262, 266 (Colo. 2006) (holding that “the legislature ‘may not attach conditions to a general appropriation bill which purport to reserve to the legislature powers of close supervision that are essentially executive in character.’”); see also *Anderson v. Lamm*, 579 P.2d 620 (Colo. 1978); *Colorado General Assembly v. Lamm*, 704 P.2d 1371 (Colo. 1985) (hereinafter *Lamm II*). Furthermore, Article V, section 32 of the Colorado Constitution prohibits the legislature from including substantive legislation in the Long Bill. *Owens*, 136 P.3d at 266; *Anderson*, 579 P.2d at 624; *Lamm II*, 704 P.2d at 1382.

Three footnotes, however, violate Article III and/or Article V of the Colorado Constitution, as well as certain provisions of House Bill 08-1321. Because the executive branch cannot abide by legislative directives that are in violation of the Colorado Constitution, I have vetoed the following footnotes:

FOOTNOTES

1. **Footnote 8, page 58:** Department of Health Care Policy and Financing, Executive Director's Office, General Administration, General Professional Services and Special Projects -- It is the intent of the General Assembly that \$150,000 of the appropriation be used to conduct a study of the adequacy of the rates paid to the Program for All Inclusive Care to the Elderly (PACE). The Department is requested to work with the Centers of Medicare and Medicaid Services and the provider community in developing the criteria for assessing the frailty of PACE clients compared to the frailty of other Long-term Care clients being served in nursing homes and the home- and- community based programs. The Department is requested to submit the results of the study to the Joint Budget Committee no later than September 30, 2009.

I am vetoing this footnote but am directing the Department to comply to the extent feasible. By requesting that a portion of the appropriation be used to conduct a specific study and that the results be reported by a date certain, this footnote goes beyond simply expressing legislative intent and violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation and runs afoul of House Bill 08-1321 by requesting that certain administrative action be taken in connection with an appropriation. I will, however, direct the Department to comply to the extent feasible. Specifically, due to the substantial commitment of resources to complete this report and the need to include new PACE providers and their additional input, I am directing the Department to comply by December 1, 2008 which is the earliest that the requested report can feasibly be prepared and submitted.

2. **Footnote 35, page 101:** Department of Human Services, Division of Child Care, Child Care Assistance Program Automated System Replacement -- It is the intent of the General Assembly that this project: 1) have a steering committee that includes a county commissioner, a county human services director, and a user of the system; 2) that the Department pilot the program before rolling it out; 3) that the steering committee, including the county representatives, should decide whether the system is "go" or "no go" at the roll out stages; and 4) that ongoing costs for maintenance and administration of this system be covered through savings in or reductions to the Colorado Child Care Assistance Program and remaining Child Care Development Fund reserves. The new system will not drive additional costs to the state General Fund.

I am vetoing this footnote and directing the Department to comply to the extent feasible. By detailing the requested membership of the steering

committee, requesting that a pilot program be conducted, vesting the “go” or “no go” decision in the steering committee, and specifying the manner in which maintenance and administration costs be covered, this footnote goes well beyond simply expressing legislative intent and violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation and runs afoul of House Bill 08-1321 by requesting that certain administrative action be taken in connection with an appropriation. I will, however, ask the Department to consider the General Assembly’s suggestions during the implementation of this project.

3. **Footnote 39, page 102:** Department of Human Services, Services for People with Disabilities, Community Services for People with Developmental Disabilities, Program Costs– This appropriation includes funding for the following additional caseload: (1) comprehensive residential services for 305 adults for an average of six months, including 45 persons transitioning from foster care, 62 emergency placements, 78 "high risk" waiting list placements, and 120 regular waiting list placements; (2) supported living services for 345 adults, including 28 persons transitioning from the Children's Extensive Support program for an average of six months, 200 others added for an average of six months, and 117 added for a full year (12 months); and (3) family support services, for an average of six months, for 100 additional families.

I am not exercising my right to veto this footnote. As written, the footnote is not clear that it simply expresses an assumption used to calculate the appropriation or legislative intent, as opposed to an unconstitutional administration of the appropriation. I have directed the Department to treat this footnote an assumption used to calculate the appropriation, and not a limitation on the appropriation. As a calculation footnote it complies with the provisions of House Bill 08-1321.

4. **Footnote 57a, page 231:** Grand Totals, Operating Budgets – It is the intent of the General Assembly that no state funds shall be allocated to local governments that have failed to enforce the provisions of HB 06S-1023.

I am vetoing this footnote and am directing the Departments not to comply for two reasons. First, this footnote violates Article V, section 32 of the Colorado Constitution, which prohibits the inclusion of substantive legislation in the Long Bill. *See, e.g., General Assembly v. Owens*, 136 P.3d 262, 266 (Colo. 2006) (“The legislature is prohibited from including substantive legislation in a general appropriations bill.”). Footnote 57a, by expressing the intent that “no state funds shall be allocated to local governments that have failed to enforce the provisions of House Bill 06S-1023,” constitutes substantive legislation. This is because, if given effect, footnote 57a would amend House Bill 06S-1023 by adding an enforcement provision that was absent from the measure. *See C.R.S. § 24-76.5-101, et seq.* Therefore, the footnote is unconstitutional. *See Anderson v. Lamm*, 579 P.2d 620, 624 (Colo. 1978) (holding that it is a violation of Colo.

Const. art V, § 32 for the General Assembly to “amend” a law in the general appropriations bill). Second, this footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation and runs afoul of House Bill 08-1321 by requesting that certain administrative action be taken in connection with an appropriation.

For these reasons, I have exercised my power to veto certain portions of House Bill 08-1375.

Sincerely,

A handwritten signature in black ink that reads "Bill Ritter Jr." in a cursive, slightly stylized font.

Bill Ritter, Jr.
Governor